

AMENDED IN ASSEMBLY AUGUST 29, 2012

AMENDED IN ASSEMBLY AUGUST 24, 2012

AMENDED IN ASSEMBLY JUNE 13, 2012

AMENDED IN SENATE MAY 2, 2012

AMENDED IN SENATE APRIL 16, 2012

SENATE BILL

No. 1105

Introduced by Senator Lieu

February 16, 2012

An act to amend Section 4903.1 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1105, as amended, Lieu. Workers' compensation: liens.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing workers' compensation law authorizes the Workers' Compensation Appeals Board to determine and allow specified expenses as liens against any sum to be paid as compensation. Existing law requires, before issuing an award or approval of any compromise of claim, the determination of whether any benefits have been paid or services provided by specified entities.

This bill would require the appeals board to allow a lien for loss-of-time benefits paid by a self-insured employee welfare benefit plan, as defined.

This bill would incorporate additional changes in Section 4903.1 of the Labor Code proposed by SB 863 that would become operative only

if SB 863 and this bill are both chaptered and become effective on or before January 1, 2013, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4903.1 of the Labor Code is amended to
2 read:

3 4903.1. (a) The appeals board, arbitrator, or settlement
4 conference referee, before issuing an award or approval of any
5 compromise of claim, shall determine, on the basis of liens filed
6 with it pursuant to subdivision (b) or (c), whether any benefits
7 have been paid or services provided by a health care provider, a
8 health care service plan, a group disability policy, including a
9 loss-of-income policy, a self-insured employee welfare benefit
10 plan, or a hospital service contract, and its award or approval shall
11 provide for reimbursement for benefits paid or services provided
12 under these plans as follows:

13 (1) When the referee issues an award finding that an injury or
14 illness arises out of and in the course of employment, but denies
15 the applicant reimbursement for self-procured medical costs solely
16 because of lack of notice to the applicant's employer of his or her
17 need for hospital, surgical, or medical care, the appeals board shall
18 nevertheless award a lien against the employee's recovery, to the
19 extent of benefits paid or services provided, for the effects of the
20 industrial injury or illness, by a health care provider, a health care
21 service plan, a group disability policy, a self-insured employee
22 welfare benefit plan, or a hospital service contract.

23 (2) When the referee issues an award finding that an injury or
24 illness arises out of and in the course of employment, and makes
25 an award for reimbursement for self-procured medical costs, the
26 appeals board shall allow a lien, to the extent of benefits paid or
27 services provided, for the effects of the industrial injury or illness,
28 by a health care provider, a health care service plan, a group
29 disability policy, a self-insured employee welfare benefit plan, or
30 a hospital service contract. For purposes of this paragraph, benefits
31 paid or services provided by a self-insured employee welfare
32 benefit plan shall be determined notwithstanding the official
33 medical fee schedule adopted pursuant to Section 5307.1.

1 (3) (A) When the referee issues an award finding that an injury
2 or illness arises out of and in the course of employment and makes
3 an award for temporary disability indemnity, the appeals board
4 shall allow a lien as living expense under Section 4903, for benefits
5 paid by a group disability policy providing loss-of-time benefits
6 and for loss-of-time benefits paid by a self-insured employee
7 welfare benefit plan. Such lien shall be allowed to the extent that
8 benefits have been paid for the same day or days for which
9 temporary disability indemnity is awarded and shall not exceed
10 the award for temporary disability indemnity. No lien shall be
11 allowed hereunder unless the group disability policy or self-insured
12 employee welfare benefit plan provides for reduction, exclusion,
13 or coordination of loss-of-time benefits on account of workers'
14 compensation benefits.

15 (B) For purposes of this paragraph, "self-insured employee
16 welfare benefit plan" means any plan, fund, or program that is
17 established or maintained by an employer or by an employee
18 organization, or by both, to the extent that the plan, fund, or
19 program was established or is maintained for the purpose of
20 providing for its participants or their beneficiaries, other than
21 through the purchase of insurance, either of the following:

- 22 (i) Medical, surgical, or hospital care or benefits.
23 (ii) Monetary or other benefits in the event of sickness, accident,
24 disability, death, or unemployment.

25 (4) When the parties propose that the case be disposed of by
26 way of a compromise and release agreement, in the event the lien
27 claimant, other than a health care provider, does not agree to the
28 amount allocated to it, then the referee shall determine the potential
29 recovery and reduce the amount of the lien in the ratio of the
30 applicant's recovery to the potential recovery in full satisfaction
31 of its lien claim.

32 (b) When a compromise of claim or an award is submitted to
33 the appeals board, arbitrator, or settlement conference referee for
34 approval, the parties shall file with the appeals board, arbitrator,
35 or settlement conference referee any liens served on the parties.

36 (c) Any lien claimant under Section 4903 or this section shall
37 file its lien with the appeals board in writing upon a form approved
38 by the appeals board. The lien shall be accompanied by a full
39 statement or itemized voucher supporting the lien and justifying
40 the right to reimbursement and proof of service upon the injured

1 worker, or if deceased, upon the worker's dependents, the
2 employer, the insurer, and the respective attorneys or other agents
3 of record.

4 (d) The appeals board shall file liens required by subdivision
5 (c) immediately upon receipt. Numbers shall be assigned pursuant
6 to subdivision (c) of Section 5500.

7 (e) The changes made to this section by Senate Bill 457 of the
8 2011–12 Regular Session do not modify in any way the rights or
9 obligations of the following:

10 (1) Any health care provider to file and prosecute a lien pursuant
11 to subdivision (b) of Section 4903.

12 (2) A payor to conduct utilization review pursuant to Section
13 4610.

14 (3) Any party in complying with the requirements under Section
15 4903.

16 ~~SEC. 1.5. Section 4903.1 of the Labor Code is amended to~~
17 ~~read:~~

18 ~~4903.1. The appeals board, arbitrator, or settlement conference~~
19 ~~referee, before issuing an award or approval of any compromise~~
20 ~~of claim, shall determine, on the basis of liens filed with it pursuant~~
21 ~~to Section 4903.05, whether any benefits have been paid or services~~
22 ~~provided by a health care provider, a health care service plan, a~~
23 ~~group disability policy, including a loss-of-income policy, a~~
24 ~~self-insured employee welfare benefit plan, or a hospital service~~
25 ~~contract, and its award or approval shall provide for reimbursement~~
26 ~~for benefits paid or services provided under these plans as follows:~~

27 ~~(a) When the referee issues an award finding that an injury or~~
28 ~~illness arises out of and in the course of employment, but denies~~
29 ~~the applicant reimbursement for self-procured medical costs solely~~
30 ~~because of lack of notice to the applicant's employer of his or her~~
31 ~~need for hospital, surgical, or medical care, the appeals board shall~~
32 ~~nevertheless award a lien against the employee's recovery, to the~~
33 ~~extent of benefits paid or services provided, for the effects of the~~
34 ~~industrial injury or illness, by a health care provider, a health care~~
35 ~~service plan, a group disability policy, a self-insured employee~~
36 ~~welfare benefit plan, or a hospital service contract.~~

37 ~~(b) When the referee issues an award finding that an injury or~~
38 ~~illness arises out of and in the course of employment, and makes~~
39 ~~an award for reimbursement for self-procured medical costs, the~~
40 ~~appeals board shall allow a lien, to the extent of benefits paid or~~

services provided, for the effects of the industrial injury or illness, by a health care provider, a health care service plan, a group disability policy, a self-insured employee welfare benefit plan, or a hospital service contract.

(e) (1) When the referee issues an award finding that an injury or illness arises out of and in the course of employment and makes an award for temporary disability indemnity, the appeals board shall allow a lien as living expense under Section 4903, for benefits paid by a group disability policy providing loss-of-time benefits and for benefits paid by a self-insured employee welfare benefit plan. The lien shall be allowed to the extent that benefits have been paid for the same day or days for which temporary disability indemnity is awarded and shall not exceed the award for temporary disability indemnity. A lien shall not be allowed hereunder unless the group disability policy or self-insured employee welfare benefit plan provides for reduction, exclusion, or coordination of loss-of-time benefits on account of workers' compensation benefits.

(2) For purposes of this subdivision, "self-insured employee welfare benefit plan" means any plan, fund, or program that is established or maintained by an employer or by an employee organization, or by both, to the extent that the plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, other than through the purchase of insurance, either of the following:

(A) Medical, surgical, or hospital care benefits.

(B) Monetary or other benefits in the event of sickness, accident, disability, death, or unemployment.

(d) When the parties propose that the case be disposed of by way of a compromise and release agreement, in the event the lien claimant, other than a health care provider, does not agree to the amount allocated to it, then the referee shall determine the potential recovery and reduce the amount of the lien in the ratio of the applicant's recovery to the potential recovery in full satisfaction of its lien claim.

SEC. 1.5. Section 4903.1 of the Labor Code is amended to read:

4903.1. (a) The appeals board, or arbitrator, or settlement conference referee, before issuing an award or approval of any compromise of claim, shall determine, on the basis of liens filed with it pursuant to subdivision (b) or (e) Section 4903.05, whether

1 any benefits have been paid or services provided by a health care
2 provider, a health care service plan, a group disability policy,
3 including a ~~loss of income~~ *loss-of-income* policy; ~~or a self-insured~~
4 ~~employee welfare benefit plan, or a hospital service contract,~~ and
5 its award or approval shall provide for reimbursement for benefits
6 paid or services provided under these plans as follows:

7 ~~(1) When the referee~~ *If the appeals board* issues an award
8 finding that an injury or illness arises out of and in the course of
9 employment, but denies the applicant reimbursement for
10 self-procured medical costs solely because of lack of notice to the
11 applicant's employer of his *or her* need for hospital, surgical, or
12 medical care, the appeals board shall nevertheless award a lien
13 against the employee's recovery, to the extent of benefits paid or
14 services provided, for the effects of the industrial injury or illness,
15 by a health care provider, a health care service plan, a group
16 disability policy; *or a self-insured employee welfare benefit plan,*
17 ~~or a hospital service contract~~ *subject to the provisions described*
18 *in subdivision (b).*

19 ~~(2) When the referee~~ *If the appeals board* issues an award
20 finding that an injury or illness arises out of and in the course of
21 employment, and makes an award for reimbursement for
22 self-procured medical costs, the appeals board shall allow a lien,
23 to the extent of benefits paid or services provided, for the effects
24 of the industrial injury or illness, by a health care provider, a health
25 care service plan, a group disability policy; *or a self-insured*
26 *employee welfare benefit plan, or a hospital service contract* *subject*
27 *to the provisions of subdivision (b).* For purposes of this paragraph,
28 benefits paid or services provided by a self-insured employee
29 welfare benefit plan shall be determined notwithstanding the
30 official medical fee schedule adopted pursuant to Section 5307.1.

31 ~~(3) When the referee~~

32 (3) (A) *If the appeals board* issues an award finding that an
33 injury or illness arises out of and in the course of employment and
34 makes an award for temporary disability indemnity, the appeals
35 board shall allow a lien as living expense under Section 4903, for
36 benefits paid by a group disability policy providing ~~loss of time~~
37 ~~benefits. Such loss-of-time benefits and for loss-of-time benefits~~
38 *paid by a self-insured employee welfare benefit plan. The* lien shall
39 be allowed to the extent that benefits have been paid for the same
40 day or days for which temporary disability indemnity is awarded

1 and shall not exceed the award for temporary disability indemnity.
2 ~~No lien shall~~ *A lien shall not* be allowed hereunder unless the group
3 disability policy *or self-insured employee welfare benefit plan*
4 provides for reduction, exclusion, or coordination of ~~loss of time~~
5 *loss-of-time* benefits on account of workers' compensation benefits.

6 (B) *For purposes of this paragraph, "self-insured employee*
7 *welfare benefit plan" means any plan, fund, or program that is*
8 *established or maintained by an employer or by an employee*
9 *organization, or by both, to the extent that the plan, fund, or*
10 *program was established or is maintained for the purpose of*
11 *providing for its participants or their beneficiaries, other than*
12 *through the purchase of insurance, either of the following:*

13 (i) *Medical, surgical, or hospital care or benefits.*

14 (ii) *Monetary or other benefits in the event of sickness, accident,*
15 *disability, death, or unemployment.*

16 (4) ~~When~~ *If* the parties propose that the case be disposed of by
17 way of a compromise and release agreement, in the event the lien
18 claimant, other than a health care provider, does not agree to the
19 amount allocated to it, then the ~~referee~~ *appeals board* shall
20 determine the potential recovery and reduce the amount of the lien
21 in the ratio of the applicant's recovery to the potential recovery in
22 full satisfaction of its lien claim.

23 (b) ~~When a compromise of claim or an award is submitted to~~
24 ~~the appeals board, arbitrator, or settlement conference referee for~~
25 ~~approval, the parties shall file with the appeals board, arbitrator,~~
26 ~~or settlement conference referee any liens served on the parties.~~

27 (e) ~~Any lien claimant under Section 4903 or this section shall~~
28 ~~file its lien with the appeals board in writing upon a form approved~~
29 ~~by the appeals board. The lien shall be accompanied by a full~~
30 ~~statement or itemized voucher supporting the lien and justifying~~
31 ~~the right to reimbursement and proof of service upon the injured~~
32 ~~worker, or if deceased, upon the worker's dependents, the~~
33 ~~employer, the insurer, and the respective attorneys or other agents~~
34 ~~of record.~~

35 (d) ~~The appeals board shall file liens required by subdivision~~
36 ~~(e) immediately upon receipt. Numbers shall be assigned pursuant~~
37 ~~to subdivision (e) of Section 5500.~~

38 (b) *Notwithstanding subdivision (a), payment or reimbursement*
39 *shall not be allowed, whether payable by the employer or payable*
40 *as a lien against the employee's recovery, for any expense incurred*

1 *as provided by Article 2 (commencing with Section 4600) of*
2 *Chapter 2 of Part 2, nor shall the employee have any liability for*
3 *the expense, if at the time the expense was incurred the provider*
4 *either knew or in the exercise of reasonable diligence should have*
5 *known that the condition being treated was caused by the*
6 *employee's present or prior employment, unless at the time the*
7 *expense was incurred at least one of the following conditions was*
8 *met:*

9 *(1) The expense was incurred for services authorized by the*
10 *employer.*

11 *(2) The expense was incurred for services furnished while the*
12 *employer failed or refused to furnish treatment as required by*
13 *subdivision (c) of Section 5402.*

14 *(3) The expense was necessarily incurred for an emergency*
15 *medical condition, as defined by subdivision (b) of Section 1317.1*
16 *of the Health and Safety Code.*

17 ~~(e)~~

18 *(c) The changes made to this section by Senate Bill 457 of the*
19 *2011–12 Regular Session do not modify in any way the rights or*
20 *obligations of the following:*

21 *(1) Any health care provider to file and prosecute a lien pursuant*
22 *to subdivision (b) of Section 4903.*

23 *(2) A ~~payor~~ payer to conduct utilization review pursuant to*
24 *Section 4610.*

25 *(3) Any party in complying with the requirements under Section*
26 *4903.*

27 SEC. 2. Section 1.5 of this bill incorporates all of the
28 substantive amendments to Section 4903.1 of the Labor Code
29 proposed by both this bill and Senate Bill 863. It shall only become
30 operative if (1) both bills are enacted and become effective on or
31 before January 1, 2013, (2) each bill amends Section 4903.1 of the
32 Labor Code, and (3) this bill is enacted after Senate Bill 863, in
33 which case Section 1 of this bill shall not become operative.